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**EXHIBIT A**

NO. 7390 P. 30



## UNITED STATES DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/638,678	10/30/00	BRENDEL	

HM12/0618

EXAMINER

FINNIGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER  
FRANKLIN SQUARE BLDG., SUITE 700  
1300 I STREET, NW  
WASHINGTON DC 20005-3315

RECEIVED

ART UNIT 1625 PAPER NUMBER 7

06/18/01

JUN 20 2001

DATE MAILED:

FINNIGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, LLP

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Docketed 6-20-1 Attorney CLE-BLD-SJS

Case 2481-1687-01

Due Date 7-18-01 w/ ext

Action one-month ext. due JUN 20 2001

By UWA

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/698,078	BRENDEL ET AL.	
	Examiner RITA J. DESAI	Art Unit 1625	
<p><i>- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i></p> <p><b>Period for Reply</b></p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul> <p><b>Status</b></p> <p>1)<input type="checkbox"/> Responsive to communication(s) filed on _____.</p> <p>2a)<input type="checkbox"/> This action is FINAL.      2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p> <p><b>Disposition of Claims</b></p> <p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-19</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input checked="" type="checkbox"/> Claims <u>1-19</u> are subject to restriction and/or election requirement.</p> <p><b>Application Papers</b></p> <p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p> <p>11)<input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved.</p> <p>12)<input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p> <p><b>Priority under 35 U.S.C. § 119</b></p> <p>13)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some c)<input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> <li>1)<input type="checkbox"/> Certified copies of the priority documents have been received.</li> <li>2)<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</li> <li>3)<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ol> <p>* See the attached detailed Office action for a list of the certified copies not received.</p> <p>14)<input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p> <p><b>Attachment(s)</b></p> <p>15)<input type="checkbox"/> Notice of References Cited (PTO-892)      18)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</p> <p>16)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848)      19)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>17)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .      20)<input type="checkbox"/> Other: _____</p>			

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## DETAILED ACTION

### *Election Restriction*

Claims 1-6, 18 and 19 are generic to a plurality of disclosed patentably distinct species comprising pyridyl, theinyl, furyl and other hetero groups. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

The disclosed species elected will be used as a starting point to make a restricted group based on fair interpretation of the principals of legal and chemical equivalence.

Applicants are given a shortened statutory period of ONE MONTH for an election, even though it may be traversed.

A failure to elect will be considered non-responsive and would lead to the abandonment of the case.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Mr. Steven Scott on 6/5/2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RITA J. DESAI whose telephone number is 703-305-1868. The examiner can normally be reached on Monday - Friday, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703-308-4698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-7922 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

R.D.  
June 13, 2001

*Alan L Rotman*  
ALAN L. ROTMAN  
PRIMARY EXAMINER

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